

2 Williams?

3 PROSPECTIVE JUROR NO SEVEN: Yes, I guess
4 so.

5 THE CLERK: Take seat number eight, Margie
6 Evans.

7 Take seat number nine, David Oppenheim.

8 Take seat ten, Ramon Nazpot.

9 Take seat eleven, Cynthia Barlow.

10 Take seat twelve, Shirley Fields.

11 Take seat thirteen, Sandra Lynch Bradford.

12 (Whereupon, an off-the-record discussion was
13 had at the bench between all counsel, prospective
14 juror and the Court.)

15 THE CLERK: Take seat thirteen, James Keating.

16 Take seat fourteen, Anna Ippolito.

21 PROSPECTIVE JUROR NO. 13: Just one question.

22 Could you repeat the name of the detectives that
23 are going to be testifying? One of them sounded
24 familiar to me. I am not sure.

25 THE COURT: Hernandez. Gallery. Fiorica.

2 Eversman, Nieves and Garcia.

3 PROSPECTIVE JUROR NO. 13: I worked with the
4 name of Fiorica who I know his brother is a
5 policeman.

6 THE COURT: Fiorica is in the ballistics
7 squad.

8 PROSPECTIVE JUROR NO. 13: The fellow I work
9 with, I met his brother eight, ten years ago. I
10 don't know if it's the same.

15 MR. VECCHIONE: Essentially and that they came
16 from the same gun.

17 THE COURT: Would that affect you in any way?

18 PROSPECTIVE JUROR NO. 13: No, sir.

19 THE COURT: So all of you can be fair jurors,
20 treat and give the defendant a fair trial and the
21 people a fair trial and decide this case solely on
22 the credible evidence that you find during the
23 course of the trial and applying it to the law that
24 I give you; you can all do that?

Now, you understand that this defendant, as

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he sits here, is presumed to be not guilty. You understand that? And that presumption remains with him throughout the trial. And it sticks unless you are satisfied beyond a reasonable doubt that the presumption has been overcome by the credible evidence. Now, the burden of the proof is on the District Attorney and it never shifts. The District Attorney has to present evidence to satisfy you beyond a reasonable doubt. The defendant having said "not guilty" has no further burden. That's his story. He told his story right up front and he has no further obligation. He doesn't have to say anything, his lawyer doesn't have to say anything. Is that clear? Anybody have any problem with that? Now, as I mentioned to you earlier, after the case is all over, you will be called upon to deliberate and determine whether the People have proven beyond a reasonable doubt the elements of the crimes charged. You see, you are going to hear a lot of material during this case. Most of it is given to you to help you evaluate the credibility of witnesses. The People must satisfy you beyond a reasonable doubt of the elements of each crime. They don't have to prove everything

2 beyond a reasonable doubt, but each crime has
3 certain elements. Murder, for example, has three
4 elements. They have to prove all three beyond a
5 reasonable doubt. You can't say they proved two
6 and it doesn't matter about the third. You have to
7 have all three. The robbery has elements. They
8 must prove each and every element beyond a
9 reasonable doubt. Is that clear?

Now, I am going to recess now for lunch, then
I will ask questions after lunch. Please be back
at 2:00 p.m. When I say for you 2:00 p.m., I am
going to have all the lawyers here by 2:15, because
by the time all of you get up here and the
fantastic elevator service we have, it may take you
five or ten minutes longer, so try to get up in the
hallway. Don't come in here. Those of you in the
box remember your seat number and wait outside the
door on my right. That one. All the rest of you
come back here. Don't go downstairs. Come back
here at 2 o'clock and wait by that doorway. All
right? I will see you all then. Have a pleasant
lunch.

24 (Whereupon, the prospective jurors in the box,
25 sworn jurors and the panel of prospective jurors

7 THE CLERK: What is your name?

8 A JUROR: Helen Williams.

9 THE COURT: 2 o'clock, Central Jury.

10 MR. HARRISON: Your Honor --

11 THE COURT: Wait until she leaves.

12 Yes, Mr. Harrison?

13 MR. HARRISON: I have a series of complaint
14 followups where names are redacted.

18 MR. HARRISON: I don't -- if I may, Your
19 Honor, I don't have a problem with the address. To
20 me, that's inconsequential, as long as I have their
21 names. I understand the circumstances.

22 THE COURT: You are going to have their names
23 right after lunch or shortly thereafter.

24 MR. VECCHIONE: Correct.

25 MR. HARRISON: Fine enough. As long as I get

2 it before before the People open.

3 THE COURT: You know you have a bunch of pros
4 here. They know their obligations.

5 MR. VECCHIONE: I just wanted to remind the
6 Court, I know I mentioned it to you before, to be
7 able to go at 3 o'clock with Judge Keating.

8 THE COURT: I know. We are doing well.

9 MR. HARRISON: I know. It's almost
10 lunchtime. Can he have a visit?

11 THE COURT: Let him say hello to his
12 mother.

13 (Luncheon recess.)

14 (After the luncheon recess.)

15 (Jury selection continued, not recorded.)

16 (Whereupon, the following transpired outside the
17 presence and hearing of the panel of prospective
18 jurors.)

19 THE CLERK: Counsel, we have five sworn
20 jurors. The People have exhausted three
21 challenges, the defense five challenges. As
22 to the entire panel, any challenges for cause,
23 People?

24 MR. VECCHIONE: No challenges.

25 THE COURT: Cause, defense?

1 Jury Selection

2 MR. HARRISON: No.

3 THE CLERK: Peremptorily? Peremptorily, first
4 seven, People?

5 MR. VECCHIONE: Number four, Mr. Young-

6 Number five, Miss Axelrod.

7 That's it.

8 THE CLERK: Peremptorily, defense?

9 MR. HARRISON: Your Honor, may I just go off
10 the record for one minute?

11 THE COURT: Sure.

12 (Discussion held off the record.)

13 MR. HARRISON: I am going to challenge number
14 one, number two.

15 THE COURT: Obviously, we are not going to get
16 a jury.

17 MR. HARRISON: Number three is acceptable to
18 the defense and number six is acceptable to the
19 defense

THE CLERK: And number seven?

21 MR. HARRISON: Oh, seven, I am challenging
22 SUGAR

23 THE CLERK: Mr. Nappo, 13

24 MR. HARRISON. That's correct.

25 THE CLERK: That makes juror number six.

6 MR. VECCHIONE: Just give me one second.

9 MR. VECCHIONE: Miss Scott.

10 THE CLERK: Miss Scott, number ten.

11 MR. VECCHIONE: And Fields, number 12. The
12 rest are acceptable.

13 THE CLERK: Peremptorily, defense?

14 MR. HARRISON: Number nine, Mr. Oppenheim.

15 May I have one minute?

16 THE COURT: Sure.

17 (Short pause in the proceedings.)

18 MR. HARRISON: Eight, I am not
19 challenging. Eight is acceptable and eleven is
20 acceptable to the defense.

21 THE CLERK: That makes Theresa Gablowsky juror
22 number eight and Cynthia Barlow number nine.

23 As to the remaining two jurors, peremptorily,
24 People?

25 MR. VECCHIONE: Thirteen and fourteen?

2 THE CLERK: Right.

3 MR. VECCHIONE: Acceptable.

4 THE CLERK: Defense?

5 MR. HARRISON: I am challenging both.

6 THE CLERK: Okay.

7 THE COURT: We have nine jurors.

10 MR. VECCHIONE: I'd rather do it myself. Not
11 any reflexion on Mr. Posner.

17 MR. VECCHIONE: Thank you.

23 THE COURT: I would. Once we open, I want to
24 start the case.

25 THE CLERK: I don't have a large calendar at

2 all tomorrow.

3 THE COURT: So, 10 o'clock.

4 MR. VECCHIONE: Fine. Very good. Thank you,
5 Judge.

6 (Whereupon, the following transpired in the
7 presence and hearing of the jury panel of
8 prospective jurors in the courtroom.)

12 Step out, James Keating Anna Ippolito, David
13 Oppenheim, Ramon Nazpot, Shirley Fields, Anthony
14 Napolis, Umberto Bartolomeo, Maureen Norris, Ronald
15 Young and Rachel Axelrod.

16 THE COURT: Is the remaining jurors
17 satisfactory?

18 MR. VECCHIONE: Yes, Your Honor.

19 MR. HARRISON: Yes.

20 THE CLERK: Jurors, kindly stand and raise
21 your right hand.

22 Do you and each of you solemnly swear or
23 affirm that you will try this action in a just and
24 impartial manner and to the best of your judgment
25 render a verdict in accordance with the law and the

2 evidence, so help you God?

3 (Jurors respond in the affirmative.)

4 THE COURT: Would you sit in that front row?

5 Mr. Vecchione, is it okay with you if I fill
6 the box so I know who has to be excused?

7 MR. VECCHIONE: Sure, Judge.

3 THE COURT: Can the rest slide over so we can
9 make room for the rest of these four?

10 MR. VECCHIONE: Just give me a second before
11 you do it. Your Honor.

12 (Short pause in the proceedings.)

17 Take seat number one, Martha Smalls.

18 Martha Smallis?

19 THE JUROR: Here.

20 THE COURT: By taking the seat, you are
21 telling me you are going to be a fair and impartial
22 juror in this case.

23 THE CLERK: Take seat number two, Louis Birro,
24 B-i-r-r-o.

25 THE JUROR: Can I approach?

2 (Whereupon, a discussion was had off the
3 record at the bench between all counsel and the
4 Court and the prospective juror.)

5 THE COURT: Go back downstairs.

6 (Juror excused.)

9 THE COURT: Can we call you Miss D for short?

10 THE CLERK: Take seat three, Patricia
11 Ramseur.

12 THE JUROR: May I approach the bench?

13 THE COURT: Come on up.

14 (Whereupon, a discussion was had off the
15 record at the bench between all counsel, the Court
16 and the prospective juror.)

17 THE COURT: Go back downstairs.

18 THE CLERK: Take seat three, Desere Dansby.

19 Take seat four, Francis Epstein.

20 (Whereupon, a discussion was had off the
21 record at the bench between all counsel,
22 prospective juror and the Court.)

23 THE CLERK: Take seat number five, Emma Gene.

24 Take seat number six, Lucille Consolmango.

25 Take seat number seven in the second row, Harriet

2 Behrens.

3 THE JUROR: May I approach?

4 THE COURT: Sure.

5 (Whereupon, a discussion was had off the
6 record at the bench between the prospective juror,
7 counsel and the Court.)

6 THE CLERK: Take seat number seven, Jack Woo.

9 THE JUROR: May I approach?

10 THE COURT: Sure.

11 (Whereupon, a discussion was had off the

12 record at the bench between all counsel, the Court
13 and the prospective juror.)

14 THE COURT: Go back downstairs.

15 THE CLERK: Take seat number seven in the
16 second row, John Gomez.

17 Take seat number eight, Thomas Ponterella.

18 Take seat number nine, Peter Igneri.

19 Take seat ten, Annami Joe Young.

20 Take seat eleven, Anne Saverese.

21 Take seat twelve, Mary Arroyo.

22 Take seat thirteen, Gloria Ar

23 Take seat fourteen, Allison Antino.

24 THE COURT. Ladies and gentlemen, we

25 to recess now. One of our lawyers had a prior

2 commitment and I promised I would let him go at
3 this time, but I wanted to get this case under way
4 so that we at least -- we have more than half a
5 jury picked, so that we will finish picking the
6 jury tomorrow morning at 10:00 a.m. sharp. Please
7 be here promptly at ten. If you have to get here
8 by 6 o'clock in the morning to get on the elevator,
9 get here at six. Please be here at 10 o'clock.
10 And if there is a big line at the elevator when you
11 get there, go over to one of the court officers,
12 tell them you are a juror in Judge Egitt's part
13 and that I want you to be brought up right away.
14 But don't wait on the big line. Get here as soon
15 as you can. And those of you that were not picked,
16 wait outside at 10 o'clock tomorrow morning, okay,
17 those of you that are on this jury panel but have
18 not been selected yet, and same goes for you, when
19 you get here at 10 o'clock tomorrow morning, wait
20 right outside that door and then we will start
21 promptly at ten, I hope. I will see you all
22 tomorrow morning. Have a pleasant evening. Not
23 you, not the sworn jurors yet.

24 (Whereupon, the panel of prospective jurors
25 exited the courtroom.)

2 THE COURT: Those of you that are sworn, we
3 still have not been assigned your jury room, but we
4 are guaranteed to have one tomorrow morning. In
5 the meantime, when you get here tomorrow morning at
6 10 o'clock, go down the hall and wait for my court
7 officer, because by that time he should have a jury
8 room and he will take you down to your jury room.

11 THE COURT: A little before ten, okay? Get
12 here.

16 MR. VECCHIONE: Just mention about speaking to
17 the jurors.

2 (Whereupon, the sworn jurors exited the
3 courtroom.)

4 THE COURT: Now, will you bring in all your
5 Rosario material first thing in the morning?

6 MR. VECCHIONE: Yes, Judge.

13 MR. VECCHIONE: We will be here at ten.

14 THE COURT. I want to get this jury selected.

15 THE CLERK: Number five, Superior Court
16 Information 8907 of '90, Jabbar Collins, it's
17 adjourned till tomorrow.

18 MR. HARRISON: Your Honor, off the record.

19 (Whereupon, a discussion was had off the
20 record at the bench between all counsel and the
21 Court.)

22 (Whereupon, the proceedings were adjourned to
23 Tuesday, March 7, 1995, at 10:00 a.m.)

24 (Continued on the next page.)

25

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2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF KINGS : CRIMINAL TERM : PART 39

4 THE PEOPLE OF THE STATE OF NEW YORK

5 -against-

6 JABBAR COLLINS

7 Defendant.

8 Indictment No. 2884/94

9 8907/94

10 March 7, 1995

11 Before :

12 HONORABLE FRANCIS X. EGITTO,

13 Justice, and a jury.

14 (Appearances same as previously noted.)

15 - - - - -

16 THE CLERK: Case on trial.

17 Case on trial continues.

18 THE COURT: You wanted to put something on the
19 record before we start?

20 MR. VECCHIONE: Yes, I do, Judge.

21 THE COURT: Mr. Harrison, can you pay
22 attention for a minute, please?

23 MR. VECCHIONE: Judge, last night we
24 interviewed a witness who had given a statement to
25 the police but for the first time has come to the

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2 realization that he is going to cooperate with the
3 district attorney's office in terms of testimony.

4 He is a witness who has known this defendant for
5 about ten years and our expectation is that he
6 would testify to being present during the course of
7 the session in which this defendant and another
8 individual, who has not been arrested and charged
9 with this crime, planned this robbery and he will
10 relate the facts of that planning session. He,
11 however, will not testify that he participated
12 other than to be an individual who is listening to
13 what was going on during the course of the
14 conversations between this defendant and another
15 individual. And he named him. He says he has
16 known Mr. Collins for about ten years. The police,
17 to make sure that it was the same Jabbar Collins
18 that had been a suspect in this case, in fact
19 showed the same photo array that was the subject of
20 your hearing to this individual and he said, yes,
21 that's Jabbar. They showed him another photo
22 array, he said that's the other guy, whose name is
23 Charles Glover, who lives in the building, 126
24 Graham Avenue. The witness' name is Edwin Oliva
25 and I have his Rosario material ready to be turned

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over to defense counsel. Notice was given of the police arranged identification back when the VDF's, the voluntary disclosure forms, were filed with the Court and with Mr. Harrison. It is my opinion that he would not have been the subject of a Wade hearing since he knew him for ten years and saw him very regularly; in fact, was a friend of his. I intend to elicit the testimony about the planning session, what was said by Mr. Collins and by the other conspirator who was there, Mr. Glover, and I expect that the witness will point out Mr. Collins as being the person who participated in the discussion at that time.

18 MR. HARRISON: I would just wonder whether or
19 not the defense is entitled to a minimum hearing to
20 determine the relationship between the defendant
21 and the person making the allegation.

22 THE COURT: When Mr. Vecchione decides to call
23 that witness before the jury, I will take that much
24 of the testimony in the absence of the jury.

25 MR. VECCHIONE: That's fine. That's what I

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2 was going to suggest, if your Honor wishes to do a
3 minimal hearing.

4 THE COURT: Is that all right with you?

5 MR. HARRISON: Yes, that's fine. Of course,
6 it would be fine. If we find they don't really
7 know each other, we will go about it from there.

11 MR. VECCHIONE: One other thing: I am going
12 to turn over now, as the Court has requested that I
13 do, the Rosario material even before the jury has
14 been sworn and I have a receipt that I would like
15 Mr. Harrison to sign, but just for the record, I'd
16 like to say that it is Crime Scene photographs, one
17 through thirty-nine, memo books, three spirals, the
18 medicals of Paul Avery and Abraham Pollack, a death
19 certificate, an autopsy report, the DD-5's
20 regarding the investigation into the death of
21 Mr. Pollack, the DD-5's with respect into the
22 investigation with injuries to Paul Avery, the memo
23 books of police officer Nievez and Garcia, the
24 grand jury of witnesses we intend to call, the
25 audio tapes of Angel Santos, Adrian Diaz, Paul